LEGAL DEFINITIONS HANDOUT

**Civil Law** - an area of law covering the infringement of a person’s rights. The aim of the is to compensate

**Criminal law** - the area of law which deals with aspects of criminal conduct

Tort

**Tort** is the [law](http://en.wikipedia.org/wiki/Law) of civil wrongs. Tort law usually provides people with the rights to [compensation](http://en.wikipedia.org/wiki/Compensation) when another person harms their legally protected interests. For instance, if somebody throws a ball and it [accidentally](http://en.wikipedia.org/wiki/Accident) hits a pedestrian in the eye, any costs of medical treatment and compensation for lost income during time off work could be paid by the person who threw the ball to the person who was hurt. As well as bodily integrity, certain liberties are protected, such as the right to one's reputation. If a newspaper publishes a [defamatory](http://en.wikipedia.org/wiki/Defamation) statement about a celebrity which is untrue, the paper may have to pay damages as a way of demonstrating they were wrong. Proprietary interests can also be protected, so if somebody takes their pet [bull](http://en.wikipedia.org/wiki/Bull) into another person's china shop, and the bull breaks all the china, they will probably have to compensate for all the damage caused. Tort law is broken down into various distinct types of "torts", so that a person may sue in [negligence](http://en.wikipedia.org/wiki/Negligence), when somebody has unreasonably breached a duty of care for others' interests. Torts other than negligence focus on particular interests, as [defamation](http://en.wikipedia.org/wiki/Defamation) protecting [reputation](http://en.wikipedia.org/wiki/Reputation), [nuisance](http://en.wikipedia.org/wiki/Nuisance) and [trespass to land](http://en.wikipedia.org/wiki/Trespass_to_land) protecting [land](http://en.wikipedia.org/wiki/Land), [trespass to the person](http://en.wikipedia.org/wiki/Trespass_to_the_person) protecting bodily interests, [false imprisonment](http://en.wikipedia.org/wiki/False_imprisonment) protecting [freedom](http://en.wikipedia.org/wiki/Freedom) of movement, [conversion](http://en.wikipedia.org/wiki/Conversion) protecting [movable property](http://en.wikipedia.org/wiki/Movable_property), [economic torts](http://en.wikipedia.org/wiki/Economic_torts) protecting [contractual](http://en.wikipedia.org/wiki/Contract) interests, and so on. The majority of tort cases concern road accidents, accidents in the workplace or medical accidents.

The equivalent of tort in [civil law](http://en.wikipedia.org/wiki/Civil_law_%28legal_system%29) jurisdictions is [delict](http://en.wikipedia.org/wiki/Delict).[[1]](http://en.wikipedia.org/wiki/Tort#_note-0) The law of tort can be categorised as part of the [law of obligations](http://en.wikipedia.org/wiki/Law_of_obligations), but, unlike voluntarily assumed obligations (such as those of contract, or trust), the duties imposed by the law of tort apply to all those subject to the relevant [jurisdiction](http://en.wikipedia.org/wiki/Jurisdiction). To behave 'tortiously' is to harm another's [body](http://en.wikipedia.org/wiki/Human_rights), [property](http://en.wikipedia.org/wiki/Property_rights), or legal rights, or, possibly, to breach a duty owed under [statute](http://en.wikipedia.org/wiki/Statutory_law).

Negligence

**Negligence** is a [legal](http://en.wikipedia.org/wiki/Law) concept usually used to achieve compensation for injuries (not accidents). Negligence is a type of [tort](http://en.wikipedia.org/wiki/Tort) or [delict](http://en.wikipedia.org/wiki/Delict) and a [civil wrong](http://en.wikipedia.org/wiki/Civil_wrong), but it can also be used in [criminal law](http://en.wikipedia.org/wiki/Criminal_law). Negligence means [conduct](http://en.wikipedia.org/wiki/Behaviour) that is culpable because it misses the legal standard required of a [reasonable person](http://en.wikipedia.org/wiki/Reasonable_person) in protecting [individuals](http://en.wikipedia.org/wiki/Individual) against foreseeably risky, harmful acts of other members of society. Negligent behavior towards others gives them rights to be compensated for the [harm](http://en.wikipedia.org/wiki/Harm) to their body, property, mental well-being, financial status, or relationships. Negligence is used in comparison to acts or omissions which are intentional or willful. The law of negligence at common law is one aspect of the law of liability. Although resulting damages must be proved in order to recover compensation in a negligence action, the nature and extent of those damages are not the primary focus of this discussion.

Elements of negligence claims

In appellate court decisions, negligence suits have historically been analysed in distinct stages. First, the defendant must have had a [duty of care](http://en.wikipedia.org/wiki/Duty_of_care) towards the claimant. The courts have long established that all persons have a duty to use that degree of care that an ordinarily prudent person would have used under the circumstances, so that, at trial, the existence of the "duty" is predetermined. However, the constitutional right to jury trial on fact questions has established overwhelmingly, at least in the US, that the determination of whether the behaviour of a particular defendant in any given case constitutes negligence is ordinarily a unique question of fact for jury determination. [[1]](http://en.wikipedia.org/wiki/Negligence#_note-0) Proving negligence does not, alone, support an award of damages. Second, obviously from the definition above, the claimant must show that the defendant has breached that duty by not exercising reasonable care. The plaintiff must further show that the defendant's negligence contributed to cause harm to the claimant. Fourth, the harm must not be too remote a consequence of the negligence; that is, the negligence must be a "proximate cause" of the harm. Finally the claimant must be able to establish what kind of [damages](http://en.wikipedia.org/wiki/Damages), or compensation, he should get for his or her harm.

Duty of care

In [tort law](http://en.wikipedia.org/wiki/Tort), a **duty of care** is a legal obligation imposed on an individual requiring that they adhere to a reasonable [standard of care](http://en.wikipedia.org/wiki/Standard_of_care) while performing any acts that could foreseeably harm others. In order to proceed with an action in [negligence](http://en.wikipedia.org/wiki/Negligence), the plaintiff must be able to articulate a duty of care imposed by law which the defendant has breached. In turn, breaching a duty may subject an individual to liability in [tort](http://en.wikipedia.org/wiki/Tort).

Duty of care may be considered a formalization of the implicit responsibilities held by an individual towards another individual within society. It is not a requirement that a duty of care be defined by law, though it will often develop through the [jurisprudence](http://en.wikipedia.org/wiki/Jurisprudence) of [common law](http://en.wikipedia.org/wiki/Common_law). For example, [doctors](http://en.wikipedia.org/wiki/Physician) will be held to reasonable standards for members of their profession, rather than those of the general public in cases related to their fields.

The duty of care may exist between individuals with no *current* direct relationship (familial or contractual or otherwise), but eventually become related in some manner, as defined by common law. For instance, an engineer or construction company involved in erecting a building may be reasonably responsible to tenants inhabiting the building many years in the future.

**Damages** - a payment in money awarded to a plaintiff who succeeds in proving that the defendant caused him or her to suffer an injury, loss or infringement of rights.

**Defamation** - unlawfully damaging a person’s reputation

**Defences** - pleadings recognised by law that allow a defendant to justify his or her conduct. Defences may be complete or partial, which mean they may allow the person charged to be acquitted if accepted by the court, or they may result in a lesser charge.

**Implied consent** - in relation to sport, a player is said to consent to those things that are inherent in a particular sport, so behaviour normal to that sport is covered by implied consent.

**Legislation** - law created by Parliament; also known as statute law.

**Restraint of trade** - when a person signs a contract limiting their right to pursue a career or trade, the law views it with suspicion. If the contract is unreasonable, not in the best interests of the player, or not in the public interest, then the law may not enforce it or will cut out he offending portion from the contract

**Standard of proof** - degree to which the party bringing a case must prove their argument. In civil cases, the standard of proof is on the balance of probabilities; in criminal cases, it is beyond reasonable doubt

**Sue** - to initiate civil proceedings against another individual or party for causing you damage or injury

**Volenti non fit injuria** - ‘no harm can be done to one who consents’, or voluntary assumption of risk. It is reasonable for the law to assume that someone who participates in a recreational or leisure activity is expected to understand the hazards and the potential injury risks involved and consent to the risks. It is a [common law](http://en.wikipedia.org/wiki/Common_law) doctrine which means that if someone *willingly* places themselves in a position where harm might result, *knowing* that some degree of harm might result, they cannot then sue if harm *does* in fact happen.

**Contributory negligence** is a [common law](http://en.wikipedia.org/wiki/Common_law) [defense](http://en.wikipedia.org/wiki/Defense_(legal)) to a claim based on negligence, an action in [tort](http://en.wikipedia.org/wiki/Tort). It applies to cases where a [plaintiff](http://en.wikipedia.org/wiki/Plaintiff) has, through his own negligence, contributed to the harm he suffered. For example, a pedestrian crosses a road negligently and is hit by a driver who was driving negligently.

A **morals clause** is a clause in a contract that is usually enforceable against the athlete (although I guess they could also be used against the team or agency involved) which allows the other party to terminate the contract based upon some action(s) of the athlete. While morally offensive actions can trigger a team’s ability to terminate a contract, a morally offensive action is not required in order to trigger the clause. Actions that embarrass or stigmatize a team can also be reason enough to terminate a contract

**Balance of Probabilities** The [burden of proof](http://www.duhaime.org/LegalDictionary/B/Burdenofproof.aspx) in a civil [trial](http://www.duhaime.org/LegalDictionary/T/Trial.aspx). Also known as preponderous of [evidence](http://www.duhaime.org/LegalDictionary/E/Evidence.aspx). The common distinction is made with the burden of truth in a criminal [trial](http://www.duhaime.org/LegalDictionary/T/Trial.aspx), which is beyond a reasonable doubt. In a civil trial, one party's case need only be more probable than the other.

**Monopoly** A commercial advantage enjoyed by only one or a select few companies in which only those companies can trade in a certain area.

**Discrimination** A distinction based on the personal characteristics of an individual resulting in some disadvantage to that individual. "Every person has a right to full and equal recognition and exercise of his [human rights](http://www.duhaime.org/LegalDictionary/H/HumanRight.aspx) and freedoms, without distinction, exclusion or preference based on race, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap. Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."